REMARKS

Applicant respectfully requests reconsideration of this application as amended.

Office Action Rejections Summary of Pending Claims

Claims 43-44 have been rejected under 35 U.S.C. §103(a) as being unpatentable

over International Publication No. WO 00/19320 of Sweet et al. ("Sweet") in view of

U.S. Patent No. 5,949,976 of Chappelle ("Chappelle").

Claims 42 and 45 have been rejected under 35 U.S.C. §103(a) as being

unpatentable over Sweet in view of Chappelle, in view of Welter, and further in view of

U.S. Patent No. 6,157,618 of Boss ("Boss").

Status of Claims

Claims 42-62 are pending in the application. Claims 42, 43 and 44 have been

amended. The amended claims are supported by the specification. Claims 46-61 have

been added. No new matter has been added. Claims 1-41 have been canceled, without

prejudice.

It is submitted that claims 51-52 and 62 comply with the 35 U.S.C. §112, first

paragraph. Applicant submits that the specification at page 9, lines 5-6 states that

business site 210 may include one or more computer systems, or hosts (e.g., hosts 211-

213) connected together via intranetwork 215. Furthermore, the specification at page 11,

lines 18 refers to an embodiment in which a business site 310 (e.g., a host digital

processing system) pre-sets cookies to allow remote satellites to access particular web

pages. In other words, the cookies are pre-set on a host digital processing system, and not

on a remote satellite. Moreover, the specification at page 14, line 2, discusses an

embodiment where the configuration file on a remote monitoring system stores

parameters for a different business sites that are monitored. The parameters provide a

remote monitoring system with the information needed to monitor a host. One such

exemplary parameter being pre-defined cookies of a host. Therefore, it is submitted that the applicant did not intend to state that the cookies are pre-set on the remote digital processing system as asserted by the previous Office Action of January 13, 2005 (see page 2).

Claim Rejections

Claims 43-44 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Sweet in view of Chappelle. It is submitted that claims 43 and 44 are not unpatentable over the cited references. Each of claims 43 and 44 include the limitation of a "latency time between a request for data and receiving a first byte of data" of a host digital processing system.

The Office Action states:

> As per claims 43-44, they contain all the limitations as discussed in claims 1, 11 and 22 above. Furthermore, the combination of Sweet in view of Chappelle teaches a performance parameter that is a latency time between a request for data and receiving a first byte of data pg. 4, line 14; pg. 5, lines 14-19; Sweet discloses measuring total response time (latency)).

(Office Action, 1/13/05, pp. 3-4)

Applicant respectfully disagrees with the Office Actions characterization of the references. In particular, the portion of Sweet referred to by the Office Action that purportedly discloses latency actually discloses **an application response time**. In particular, Sweet states "the application response time is an amount of time between a time when a transaction involving an application is started by the software agent and a later time when the transaction is completed (e.g., when the last protocol message has been processed)." (Sweet, page 5, lines 16-19)(bold and underline emphasis added)(parenthetical in the original).

Moreover, one of ordinary skill in the art would not be motivated to modify Sweet to arrive at the limitations of claims 43 and 44, because the proposed modification of

Sweet would impermissibly render Sweet unsatisfactory for its intended purpose.

Therefore, there is no suggestion or motivation to make the proposed modification of

Sweet to render claims 43 and 44 obvious over the cited references. See MPEP 2143.01;

In re Gordon, 733 F.2d 900 (Fed. Cir. 1984). More specifically, Sweet is directed to the

monitoring of "applications" that a run on a system as opposed to monitoring the

performance of the network to which a system is connected. The Background section of

Sweet states that its purported invention relates to a method and apparatus for evaluating

"computer resources." In particular, the computer resource to which Sweet is concerned

with is networked software **applications**. (Sweet, Background, page 1). Moreover, in its

Summary of the Invention Section, Sweet discusses that the purported invention is for an

end-to-end evaluation of an <u>overall</u> system that <u>includes</u> an <u>application</u> running on a

server and a <u>network</u> providing access to the application. (Sweet, page 3, lines 15-20).

Accordingly, for sake of argument, if the method of Sweet were somehow modified to

evaluate a system's latency time, then it would not be operable for its intended purpose of

providing an end-to-end evaluation of the response time of the overall system that

includes the time of an application running on a server and the network times associated

with providing access to the application. Therefore, the cited references cannot be

combined in the manner purported by the Office Action to render either of claims 43 and

44 obvious.

In contrast, the latency time recited in each of claims 43-44 does not include times

associated with the run time of an "application." An advantage provided by the

monitoring of the latency time recited in each of claims 43 and 44 is that it provides a

metric of the response time of the system, itself, which is independent of any application

run by the system. For example, by including an application's response time in its

evaluation, Sweet does not provide a good metric for determine the performance of a

system relative to other systems on the network that may be running other applications.

Therefore, it is submitted that each of claims 43 and 44 are not obvious over

Sweet in view of Chappelle. Applicant requests that the rejection with respect to claims

43 and 44 be withdrawn.

Claims 42 and 45 have been rejected under 35 U.S.C. §103(a) as being

unpatentable over Sweet in view of Chappelle, in view of Welter, and further in view of

Boss. It is submitted that each of claims 42 and 45 are patentable over the cited

references.

The Office Action states:

> As to claims 42 and 45, the combination of Sweet in view of
> Chappelle, in view of Welter teaches the invention substantially as
> claimed (see rejection of independent claims above).
> The combination fails to teach the limitation performance
> parameter is a transfer rate of bytes between a first byte and a last byte of a
> response and calculating a data transfer rate.
> **However, Boss teaches the limitation of calculating a data
> transfer rate (col. 6, lines 3-11; Boss discloses that data gathering
> clients collect data on the transfer speed of a connection to the
> Internet).**
> It would have been obvious to one of ordinary skill in the art at the
> time of the invention to modify Sweet in view of Chappelle, in view of
> Welter, in view of Boss so as to monitor the transfer rate of a connection
> to a web site. One would be motivated to do so to rate the quality of the
> connection to the web site.

((Office Action, 1/13/05, p. 8)(emphasis added)

Applicant respectfully disagrees with the Office Action's assertions. First, it is

respectfully submitted that the conclusion of obviousness is based on knowledge gleaned

from the applicant's disclosure and, therefore, is improper. The mere fact that references

can be combined or modified is not sufficient to establish prima facia obviousness unless

the prior art also suggest the desirability of the combination. In re Mills, 916 F.2d 680

(Fed. Cir. 1990); MPEP 2143.01. Furthermore, the reason provided for the purported

motivation that "one would be motivated to do so to rate the quality of the connection to

the web site" is inapposite. For argument sake, even if Boss were somehow to be

combined with the other cited references, such a combination would not result in the limitations of claim 42 and 45.

Boss teaches the use of a data-gathering client that attempts to establish a local dial-up connection using an Internet Service Provider (ISP) dial-up telephone number. If the local dial up connection is established, then the data-gathering client stores the data transfer speed of the dial up connection between the client and the ISP. Only after the data transfer speed is stored, does the processing proceed to the next step where the data-gathering client attempts to access an Internet site. (Boss, col. 5, line 53 to col. 6, line 15).

The Office Action relies on Chappelle for a purported teaching of a remote digital processing system coupled to an extranetwork (e.g., the Internet). (see Office Action, 1/13/05, page 3). For argument sake, if Boss were somehow combined with Welter, such a combination would result in the data-gathering client storing a data transfer speed between a client system and the Internet. As such, a different data transfer rate would be determined by a combination of the cited references than is being claimed in claims 42 and 45. **Such a data transfer speed would not account for timing associated with an intranetwork or a web site that is being accessed by the client via the ISP.**

In applicant's claims 42 and 45, the data transfer rate that is monitored is **between the host digital processing system and the remote digital processing system**, where the host digital processing system is coupled to an intranetwork and the remote digital processing system is coupled to an extranetwork. Therefore, claims 42 and 45 are patentable over a combination of the cited references.

In conclusion, applicants respectfully submit that in view of the arguments set forth herein, the applicable rejections have been overcome.
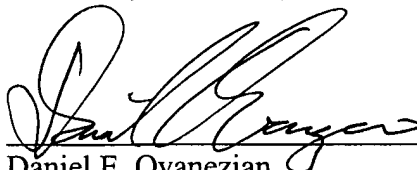
If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Daniel Ovanezian at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

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Dated: _3/9_ , 2005

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